

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION IV

CA06-80

September 27, 2006

DONNIE LEMMONS

APPELLANT

V.

ARKANSAS GLASS CONTAINER
CORP., SECOND INJURY FUND and
DEATH & PERMANENT DISABILITY
TRUSTFUND

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. E403713, E501760]

APPELLEES

AFFIRMED

Appellant Donnie Lemmons argues that the Arkansas Workers' Compensation Commission erroneously concluded that his carpal-tunnel syndrome was not related to a 1994 compensable injury to his left knee and left ankle that he sustained at his workplace—Arkansas Glass Container Corporation. He also contends that the Commission erred in its conclusion that he was not rendered permanently and totally disabled as a result of his 1994 compensable injury. We affirm the Commission's decision.

In this case, there is no evidence that Lemmons experienced any physical limitations or restrictions relative to his legs prior to his 1994 injury. He returned to work and continued working until the factory was closed. He reached maximum medical improvement on October 10, 1996, at which time he was assessed a twenty-percent permanent physical

impairment to his left lower extremity.

While discharging employment duties for a different employer in August 1999, Lemmons suffered a fall that resulted in the need for further medical treatment relative to his left lower extremity. This injury was deemed to be a recurrence injury, for which Arkansas Glass remained liable. Evidence showed that Lemmons had not worked since 1999. In July 2003, Lemmons was diagnosed by Dr. Demetrius S. Spanos, a Jonesboro neurologist, with bilateral carpal-tunnel syndrome. Additionally, on August 11, 2003, Dr. Russell L. Dickson, a psychologist, diagnosed Lemmons with conversion disorder or somatoform disorder.

On November 17, 2003, Lemmons was evaluated by Dr. Earl Peeples, a Little Rock orthopedic surgeon, pursuant to Arkansas Glass's request. Dr. Peeples concluded that Lemmons's condition was

consistent with conversion disorder and somatoform disorder, both of which are confirmed by recent MMPI testing. He has unusual ideation. He has stocking/glove decreased sensation of the entire left lower extremity. His mother expresses concern that nerve abnormalities in the foot will spread to his brain and kill him. He will not attempt to stand on his leg as it will give way. His examination is not consistent with organic findings.

[H]e does not display classic findings or carpal tunnel syndrome clinically. His previous elective operative interventions have failed to result in improvement and in view of his normal two point examination, I think it is unlikely that he will recover completely following carpal tunnel intervention. His carpal tunnel syndromes are not related to the accident of 1994. They are developmental. Perhaps, his unnecessary use of crutches secondary to his psychological condition would exacerbate the symptoms of carpal tunnel syndrome.

My sole recommendation for treatment is that Mr. Lemmons seek psychological help and support. Elective surgical intervention for pain should not be performed on Mr. Lemmons His psychological difficulties are well established and I do not believe

they are likely to change.

Dr. Peebles also had an opportunity to review reports of Dr. Spanos generated after the November 2003 evaluation that he performed. In his response, Dr. Peebles stated that Lemmons “may have, indeed, developed carpal tunnel syndrome, but, in my opinion, it is unrelated to his lower extremity injury. The development of carpal tunnel syndrome is not associated with use of cane or crutches. If this was so, literally thousands of individuals necessitated to use crutches by polio would have developed carpal tunnel syndrome and it would be well documented in the orthopedic literature.”

When reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission, and we must uphold those findings unless there is no substantial evidence to support them. *Rice v. Ga. Pac. Corp.*, 72 Ark. App. 148, 35 S.W.3d 328 (2000). In cases where a claim is denied because a claimant fails to show entitlement to compensation by a preponderance of the evidence, the substantial evidence standard of review requires that we affirm if a substantial basis for the denial of relief is displayed by the Commission’s opinion. *Id.*

In cases where a second period of medical complications follows an acknowledged compensable injury, the employer at the time of the acknowledged compensable injury remains liable if the second complication is found to be a natural and probable result of the first injury. *Bearden Lumber Co. v. Bond*, 7 Ark. App. 65, 644 S.W.2d 321 (1983). Where

it is found that the second episode has resulted from an independent intervening cause, liability is affected, with the same being noted as an aggravation. *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996).

On appeal Lemmons argues that his bilateral carpal-tunnel syndrome is a compensable consequence of the February 19, 1994, compensable injury. He claims that his carpal-tunnel syndrome was a result of his use of walking aids—canes and crutches—that were required following his 1994 leg and ankle injury and that he can no longer sustain any type of employment. However, Lemmons failed to establish these allegations by a preponderance of the evidence.

There is substantial evidence to support the Commission's conclusion that Lemmons's diagnosed bilateral carpal-tunnel syndrome was not a compensable consequence of his February 19, 1994, compensable injury. During the course of his evaluation of Lemmons, Dr. Earl Peeples opined that if indeed Lemmons did have bilateral carpal-tunnel syndrome, it was not the product of the February 19, 1994, incident or Lemmons's use of crutches. Further, the Commission relied on evidence showing that Lemmons could have suffered a separate trauma to his hands on August 31, 1999, when he fell, landing on both knees, and bracing his fall with his hands. Finally, there is no evidence that Lemmons complained of problems relative to his hands and or wrist prior to July 2003.

As to his claim of permanent, total disability, the evidence shows that Lemmons completed a correspondence course in computer repair and that during the course of his

vocational assessment Lemmons produced documents reflecting his areas of interest. The list had been retrieved from the internet, evidencing Lemmons's ability to use a computer. The vocational specialist concluded that there were jobs available for Lemmons within his medical restrictions and limitations.

Therefore, the Commission's conclusion that the compensable injury suffered by Lemmons in February 1994 is limited to the left lower extremity and its assignment of a twenty-percent permanent physical impairment to that extremity is supported by substantial evidence. Also, Lemmons has failed to sustain his burden of proof that he has been rendered permanently and totally disabled as a result of the scheduled injury to his left lower extremity suffered on February 19, 1994. *Maxey v. Tyson Foods, Inc.*, 341 Ark. 306, 18 S.W.3d 328 (2000).

Affirmed.

GRIFFEN and ROAF, JJ., agree.